USTAZ AKMAL HJ KAMARUDDIN A

v.

DATO' MOHAMAD DAUD MOHD YUSOFF & ANOR

HIGH COURT MALAYA, IPOH B
ABDUL RAHMAN SEBLI J
[ELECTION PETITION NO: 26PP-6-06-2013]
13 AUGUST 2013

ELECTION: *Petition - Declaration - Void election - Application for* C
declaration that election was void - Allegation of corrupt practice -
Preliminary objection - Whether petition satisfied mandatory requirements
of Election Petition Rules 1954 - Failure to state facts and grounds relied
on to sustain relief sought - Whether petition defective - Whether there
was non-compliance with election laws in drafting of petition - Electoral D
roll - Whether could be challenged - Whether petition struck out - Election
Offences Act 1954, s. 32(a), 32(b)

ELECTION: *Petition - Amendment - Application for declaration that*
election was void - Allegation of corrupt practice - Whether amendment E
would cause injury to respondent which could not be compensated by costs
- Whether petitioner was attempting to alter identities of electors - Whether
amendment goes to root of petition and not merely clerical error - Whether
amendment allowed

ELECTION: *Petition - Service - Whether petition should be served* F
personally by petitioner - Whether word "personally" in r. 15(1)(a)
Election Petition Rules 1954 refers to respondent - Whether advocate duly
appointed by petitioner can effect service - Whether service to be effected
on respondent personally

G

WORDS & PHRASES: *"Personally" - Election Petition Rules 1954,*
r. 15(1)(a) - Meaning of - Service of election petition - Whether petition
should be served personally by petitioner - Whether word "personally"
refers to respondent - Whether advocate duly appointed by petitioner can
effect service - Whether service to be effected personally on respondent H

This was the petitioner's action for a declaration that the election for the state constituency of N05 Selama held on 5 May 2013 was void and that the first respondent was not duly elected or ought not to have been returned as the winning candidate. The I petitioner also filed an application to amend the petition as he wanted the constituency where the alleged corrupt practice took

A place to be changed from Pasir Panjang to N05 Selama. The petition was based mainly on the facts that (i) there was general bribery under s. 32(a) of the Election Offences Act 1954 ('Election Offences Act') by the act of the first respondent and Barisan Nasional or its agents in giving out money under the Bantuan
B Rakyat 1 Malaysia ('BR1M') programme and that such general bribery did in fact affect the results of the election; and (ii) there was non-compliance with s. 32(b) of the Election Offences Act read with art. 119 of the Federal Constitution in that voters who were not resident in the constituency of N05 Selama were allowed
C to vote at the election. In raising their preliminary objections, the respondents contended, *inter alia*, that (i) the petition did not satisfy the mandatory requirements under the Election Petition Rules 1954 ('Rules') as the petitioner failed to state the facts and grounds relied on to sustain the relief sought; and (ii) there could
D be no challenge to the certified or re-certified electoral roll as they were deemed to be final pursuant to s. 9A of the Elections Act 1954. In addition to that, the first respondent argued that the petition should have been served personally by the petitioner on the first respondent and that no other person had the authority
E to do so on his behalf. On the facts, the petition was served on the first respondent by a staff of the petitioner's solicitor.

Held (striking out petition with costs):

F **(1)** If the application for amendment was allowed, it would in effect allow the petitioner to introduce a new charge against the first respondent beyond the period he was permitted to present the petition. It would be tantamount to filing afresh an election petition out of time and thus, depriving his
G opponent of the benefit of the period of limitation under s. 38 of the Election Offences Act. This would cause him an injury which could not be compensated by costs. Further, by the proposed amendment, the petitioner was in fact attempting to alter the identities of the electors whom he complained had
H been corruptly induced by the first respondent to vote for him. The proposed amendment, therefore, goes to the root of the petition and not merely a clerical error and should not be allowed. Hence, the application for amendment was accordingly dismissed with costs. (paras 6 & 7)

I **(2)** An objection to an election petition is an issue of law. The special jurisdiction conferred on the election court requires the court to observe the mandatory requirements and strict

limitations imposed by the election laws which may be contrary to the normal civil jurisdiction, common law or equity. In exercising this jurisdiction, the court has an inherent power to cleanse its list by striking out or dismissing petitions which are defective or nullities (*Devan Nair v. Yong Kuan Teik*; refd). (paras 9 & 10)

(3) In an election petition, any allegation of bribery, general or specific, must be stated with clarity and certainty. The facts pleaded must be such that if established by *viva voce* evidence, would be sufficient to prove to the satisfaction of the election judge that the offence of corrupt practice had been committed beyond any reasonable doubt. There had been fatal non-compliance with the election laws in the drafting of the petition herein. The petition did not state with certainty the person or persons who allegedly committed the corrupt practice and the person or persons who received the bribery and whether the recipient or recipients of the bribe money were on the electoral roll of the N05 Selama constituency. The petition alleged some facts on general bribery but failed to associate those facts with the specific provisions of the law. This failure rendered the petition defective in that there was a missing link between the facts stated and the grounds pleaded under s. 32(a) of the Election Offence Act. (paras 15, 17, 18 & 22)

(4) The facts necessary to support the charge of general bribery had not been sufficiently pleaded. It did not provide sufficient particulars and material facts in support of the allegation that an offence under Part III of the Election Offences Act had been committed. Amongst others, it did not provide facts and particulars to show that the extensive prevalence of the offence, if indeed it had taken place, had more probably than not affected the outcome of the election. All that was required of the petitioner was to state material facts and particulars of the alleged corrupt practice with exactitude and precision. The petition included Pasir Panjang as the place where the alleged bribery occurred but failed to state the co-relation between Pasir Panjang and the constituency of N05 Selama which was the subject matter of the present petition. (paras 12 & 13)

(5) The petition suffered from the following infirmities, *ie*, (i) there was nothing in the petition to state that there was a counter-promise by voters in the N05 Selama constituency that they would vote for the first respondent in return for the BR1M money; (ii) the petition failed to state that the alleged corrupt act was targeted at a particular or specific group of voters in the N05 Selama constituency; and (iii) the petition failed to state any fact to show that the voters in the N05 Selama constituency had in fact been induced to vote for the first respondent by the money they received under the BR1M programme. (para 19)

(6) It was outside the powers of an election judge to enquire into the electoral roll. The electoral roll is unchallengeable (*Muhammad Sanusi Md Nor v. Mohd Tajuddin Abdullah & Yang Lain*; refd). In any event, an election petition is not concerned with a dispute over the names of the registered voters in the certified electoral roll. Further, the court's only concern at this stage of the proceeding was whether the petition met the threshold requirements of the election laws and rules. (para 20)

(7) Rule 15(1)(a) of the Rules requires the service to be effected on the person of the respondent and not for service to be effected in person by the petitioner. The word 'personally' in the provision refers to the respondent and not the petitioner. To give r. 15(1)(a) the meaning ascribed to it by learned counsel for the first respondent would lead to an absurdity whereby a blind man unaided would never be able to serve his petition on the respondent. An advocate duly appointed by the petitioner can effect service on his behalf provided that (i) the service is effected on the respondent personally; and (ii) rr. 9 and 34 of the Rules are complied with. (para 23)

Case(s) referred to:

Abdul Karim Abdul Rasid v. Dato' Siti Salmah Mat Jusak & Ors [2013] 1 LNS 492 HC ***(refd)***

Abu Bakar v. Mohamed Zain [1966] 1 LNS 6 HC ***(refd)***

Ahmad Ramzi Mohamad Zubir v. Hj Abdul Hadi Awang & Ors [2009] 7 CLJ 205 HC ***(refd)***

Anang Uday Singh Dev v. Ranga Nath Mishra & Ors JT 2001 (8) (SC) 574 ***(refd)***

Devan Nair v. Yong Kuan Teik [1967] 1 LNS 37 PC ***(refd)***

Dr Shafie Abu Bakar v. Pegawai Pengurus Pilihanraya N 26 Bangi & Ors And Other Petitions [2005] 5 CLJ 349 HC ***(refd)***

Gajana Krishnaji Bapat v. Dattaji Raghobaji Meghe AIR 1995 SC 2284 ***(refd)***
Gan Joon Zin v. Fong Kui Lun & Ors [2004] 4 CLJ 729 FC ***(refd)***
Hadrwari Lal v. Kerwal Singh AIR 1972 SC 515 ***(refd)***
Harish Chandra Bajpai v. Triloki Singh AIR 1957 SC 444 ***(refd)***
Hipgrave Case [1885] 28 Ch D 356 ***(refd)***
Maude v. Lowely [1873-74] LR 9 CP 165 ***(refd)***
Mohd Nazri Hj Din v. Dato' Seri Raja Ahmad Zainuddin Raja Hj Omar & Ors [2009] 3 CLJ 221 FC ***(refd)***
Muhammad Sanusi Md Nor lwn. Mohd Tajuddin Abdullah & Yang Lain [2009] 1 CLJ 1 FC ***(refd)***
Norbert Choong Kai Chong v. Mohamed Idris bin Haji Ibrahim & Anor [1978] 1 LNS 133 HC ***(refd)***
Re Pengkalan Kota By-Election Teoh Teik Huat v. Lim Kean Siew & Anor [1981] 1 LNS 1 EP ***(refd)***
Tan Sri Joseph Kurup v. Danny Anthony Andipai; Attorney General, Malaysia (Intervener) [2009] 3 CLJ 523 FC ***(refd)***
Tengku Korish v. Mohamed Bin Jusoh & Anor And Abdul Raouf v. Ibrahim Bin Arshad & Anor And Mokhtar Bin Abdullah v. Mokhtar Bin Haji Daud & Anor [1969] 1 LNS 189 HC ***(refd)***
Tg Nawawi Tengku Ab Kadir lwn. Lokman Muda & 2 Lagi [1996] 1 CLJ 551 HC ***(refd)***
Wan Daud bin Wan Jusoh v. Mohd bin Haji Ali [1988] 2 MLJ 384 ***(refd)***
Wan Sagar Wan Embong v. Harun Taib (No 2) [2009] 1 CLJ 457 FC ***(refd)***
Zulkarnaini bin Mohamed Noor v. Syed Omar bin Mohamed & Anor [1978] 1 LNS 245 HC ***(refd)***

Legislation referred to:
Elections Act 1958, s. 9A
Election Offences Act 1954, ss. 10, 32(a), (b), (c), 38(2)
Election Petition Rules 1954, rr. 4(1)(b), (4)(3), 9, 15(1)(a), 34
Federal Constitution, art. 119

Other source(s) referred to:
PC Jain & Dr Kiran Jain, *Chawla's Election Law & Practice*, 2004th edn, p 1412
Rama Devi and Mendiratta, *Election Laws, Practice and Procedure*, p 790

For the petitioner - Unrepresented
For the 1st respondent - Firoz Hussein Ahmad Jamaluddin (Abu Bakar As-Sidek Mohd Sidek, Badrul Hisham Abdul Wahap & Mohd Hasnal Abdul Aziz with him); M/s Ong Hanim & Badrul
For the 2nd respondent - Norinna Bahadun, (Hanim Abd Rahman, Hani Aziza Ismail & Mardhiah Ahmad with her); FC's

Reported by Kumitha Abd Majid

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JUDGMENT

Abdul Rahman Sebli J:

[1] The petitioner's action is for a declaration that the election for the State constituency of N05 Selama in the State of Perak Darul Ridzuan held on 5 May 2013 is void and that the first respondent was not duly elected or ought not to have been returned as the winning candidate. The petition is opposed by the respondents by way of preliminary objections. The petitioner has also filed an application to amend the petition, which the respondents also object to.

[2] I had on the morning of 12 August 2013 after hearing arguments, including from a representative of the bar counsel who asked to be allowed to address the court as *amicus curiae* excused Dato' Bastian Vendargon, Mr Ramachandran a/l Nana Pulle and Mr Eugene Vendargon from further acting as counsel for the petitioner in these proceedings on the ground of non compliance with r. 9 and r. 34 of the Election Petition Rules 1954 ('the Rules'). It is to be noted that Dato' Bastian Vendargon and Mr Eugene Vendargon are not even included in the list of advocates filed by the petitioner pursuant to r. 9 of the Rules. This left the petitioner with no legal representation. When hearing resumed in the afternoon of the same day one Mohammad Nizar bin Jamaluddin who claimed to be the Deputy Commissioner of PAS Perak informed the court that the petitioner was not available as he was away in Terengganu for the Hari Raya celebrations and pleaded for the case to be adjourned to the following day or the day after. According to him the petitioner wishes to act for himself in these proceedings. I disallowed the request for adjournment as I saw no purpose in doing so. It is clear that the petitioner has no right in the first place to represent himself as he did not file any notice to act for himself pursuant to r. 9 of the Rules, which provides as follows:

> 9 With the petition the petitioner or petitioners shall leave at the office of the Registrar a writing signed by him or them, giving the name of an advocate whom he or they authorize to act as his or their advocate **or stating that he or they act for himself or themselves, as the case may be**, and in either case giving an address within Malaysia at which notices may be left. Every such writing shall be stamped with the duty payable thereon under the law for the time being in force. (emphasis added)

[3] The notice that the petitioner filed pursuant to r. 9 of the Rules was for the appointment of 22 advocates to represent him, among whom is 'Gopal Sri Ram' (number 11 in the list), a distinguished former Federal Court Judge whose learned judgments have inspired many.

[4] It is the respondents' contention that the petition ought to be struck out *in limine* without going through a full trial as it was filed by a firm of advocates and solicitors, namely M/s N P Ramachandran & Assocs and not by an advocate as required by the Rules. Among the various authorities cited in support of the argument is my decision in *Abdul Karim Abdul Rasid v. Dato' Siti Salmah Mat Jusak & Ors* [2013] 1 LNS 492 delivered on 30 July 2013. Since the factual matrix of the present case is identical with that of *Abdul Karim Abdul Rasid* I see no reason to depart from my decision in that case.

[5] Be that as it may, having regard to the unfortunate circumstances that the petitioner has found himself in arising from the disqualification of his three counsel and his lack of standing to represent himself, I shall deal with the merits of the preliminary objections raised by the respondents together with the petitioner's application for amendment notwithstanding his absence and lack of legal representation and notwithstanding counsel for the respondents' contention that in the absence of the petitioner the court is at liberty to dismiss outright the application for amendment and the petition. Yesterday afternoon (12 August 2013), just before the matter was adjourned for decision today, Mr Andrew Khoo Chin Hock for the bar counsel suggested that to deprive the petitioner of the right to counsel and the right to be heard would be contrary to natural justice. For the record although the petitioner had no opportunity to address the court orally on the preliminary objections and his amendment applications due to the reasons aforesaid, I have given careful consideration to his written submissions filed through his previous solicitors before Dato' Bastian Vendargon and Mr Eugene Vendargon came into the picture. I shall deal with the amendment application first.

Petitioner's Application For Amendment

[6] The rule is that the court will not readily allow an amendment the necessity for which was abundantly apparent long before the hearing and then not asked for: see *Hipgrave Case* [1885] 28 Ch D 356. In *Tengku Korish v. Mohamed Bin Jusoh &*

Anor And Abdul Raouf v. Ibrahim Bin Arshad & Anor And Mokhtar Bin Abdullah v. Mokhtar Bin Haji Daud & Anor [1969] 1 LNS 189; [1970] 1 MLJ 6 the petitions were dismissed for failure to file them within time. In *Zulkarnaini bin Mohamed Noor v. Syed Omar bin Mohamed* [1978] 1 LNS 245; [1979] 2 MLJ 143 Mohamad Zahir J held that by virtue of s. 38(2) of the Election Offences Act 1954 ('the Election Offences Act'), an amendment affecting corrupt or illegal practice is to be made within the time the petition may be presented. The present application for amendment if allowed would in effect be to allow the petitioner to introduce a new charge against the first respondent beyond the period he is permitted to present the petition. It would be tantamount to filing afresh an election petition out of time and thus depriving his opponent of the benefit of the period of limitation under s. 38 of the Election Offences Act, thereby causing him an injury which cannot be compensated by costs: see *Abu Bakar v. Mohamed Zain* [1966] 1 LNS 6; [1967] 1 MLJ 168 per Yong J. In *Maude v. Lowely* [1873-74] LR 9 CP 165 Coleridge CJ made the following pertinent observations:

> The respondent has a right to know once and for all within the twenty-one days what are the precise charges which he has to meet, and may then destroy any documents and vouchers he may possess that might have reference to any other charges. Mr. Tennant has also pointed out that, after the expiration of the twenty-one days, it would be too late for anyone else to present a fresh petition; and that to allow a petitioner to amend so as substantially to make the amended petition a fresh one, would be conferring upon him a privilege which no other person could possess.

[7] One of the petitioner's grounds to avoid the election is an act of corrupt practice by the first respondent which allegedly took place in the constituency of Pasir Panjang. By the proposed amendment the petitioner now wants the constituency where the alleged corrupt practice took place to be changed from Pasir Panjang to N05 Selama. What is sought in the amendment is to literally move the crime scene from Pasir Panjang to N05 Selama. Pasir Panjang and Selama are two distinct state constituencies from two distinct and separate parliamentary seats, namely P074 Lumut being the parliamentary constituency for Pasir Panjang while Selama is situated in the parliamentary constituency of P056 Larut. There is therefore substance in learned counsel for first

respondent's argument that by the proposed amendment the petitioner is in fact attempting to alter the identities of the electors whom he complains had been corruptly induced by the first respondent to vote for him. The proposed amendment therefore goes to the root of the petition and not merely a clerical error and should not be allowed. The application for amendment is accordingly dismissed with costs.

The First And Second Respondents' Preliminary Objections

[8] It may appear paradoxical that despite having objected to the petitioner's application to amend the petition by replacing the word 'Pasir Panjang' with the word 'N05 Selama' which I have just upheld, the respondents continued to make references to N05 Selama in their submissions in support of their preliminary objections to the petition. This perhaps is understandable as other parts of the petition retain N05 Selama as the constituency where the alleged general bribery and corrupt practice were alleged to have taken place. In other words the amendment application was confined to certain paragraphs of the petition and is not an application to amend the petition across the board. The main body of the petition still retains N05 Selama as the subject matter of the action. Indeed the petition is based on alleged irregularities in the N05 Selama election. The first and second respondents' objections to the petition are anchored on the following grounds:

(a) The petition does not satisfy the mandatory requirements of r. 4(1)(b) and r. 4(4)(3) of the Election Petition Rules 1954 ('the Rules') read with s. 32(a) of the Election Offences Act as the petitioner fails to state the facts and grounds relied on to sustain the relief sought.

(b) The petition does not satisfy the mandatory requirements of r. 4(1)(b) and r. 4(4)(3) of the Rules read together with s. 32(b) of the Election Offences Act as the petition lacks facts and grounds relied on to sustain the prayer.

(c) There can be no challenge to the certified or re-certified electoral roll as they are be deemed to be final pursuant to s. 9A of the Elections Act 1958.

The Law

[9] An objection to an election petition is an issue of law: see *Norbert Choong Kai Chong v. Mohamed Idris bin Haji Ibrahim & Anor* [1978] 1 LNS 133; [1980] 1 MLJ 316. The Election Courts have time and again held that the statutory requirements of election laws are mandatory and must be strictly observed: see for instance *Tengku Korish v. Mohamed Bin Jusoh & Anor And Abdul Raouf v. Ibrahim Bin Arshad & Anor And Mokhtar Bin Abdullah v. Mokhtar Bin Haji Daud & Anor* (*supra*). It is also a requirement of election law that the grounds for the petition must be made known: see *Wan Daud bin Wan Jusoh v. Mohd bin Haji Ali* [1988] 2 MLJ 384. All material facts must be pleaded though a concise statement of them will suffice: *Mohd Nazri Hj Din v. Dato' Seri Raja Ahmad Zainuddin Raja Hj Omar & Ors* [2009] 3 CLJ 221. It is not permissible for the court to travel outside the parameters of the petition in order to decide whether the petitioner has a cause of action: *Ahmad Ramzi Mohamad Zubir v. Hj Abdul Hadi Awang & Ors* [2009] 7 CLJ 205. In *Tan Sri Joseph Kurup v. Danny Anthony Andipai; Attorney General, Malaysia (Intervener)* [2009] 3 CLJ 523; [2009] 3 MLJ 1 the Federal Court held, *inter alia*, that non compliance with the rules or the elections laws must necessarily result in a jurisdictional defect and the court has no power to entertain the petition.

[10] The special jurisdiction conferred on the Election Court requires the court to observe the mandatory requirements and strict limitations imposed by the election laws which may be contrary to the normal civil jurisdiction, common law or equity. In exercising this jurisdiction the court has inherent power to cleanse its list by striking out or dismissing petitions which are defective or nullities: see *Devan Nair v. Yong Kuan Teik* [1967] 1 LNS 37; [1967] 1 MLJ 261, a decision of the Privy Council. In that case the election petition was struck out purely on the procedural ground that there was non compliance with r. 15 of the Rules, which rendered the petition a nullity.

[11] The present petition is based on two grounds, namely:

(a) There was general bribery under s. 32(a) of the Election Offences Act by the act of the first respondent and the Barisan Nasional or its agents in giving out money under the Bantuan Rakyat 1 Malaysia ('BR1M') program and that such general bribery did in fact affect the result of the election.

(b) There was non compliance with s. 32(b) of the Election Offences Act read with art. 119 of the Federal Constitution in that voters who were not resident in the constituency of N05 Selama were allowed to vote at the election.

General Bribery

[12] At first glance the particulars of the alleged bribery as set out in para. 7 of the petition appear to sufficiently state the facts and grounds relied on to sustain the prayer in compliance with r. 4(1)(b) of the Rules but on close scrutiny it is clear that the petitioner is beating around the bush. Even the facts necessary to support the charge of general bribery have not been sufficiently pleaded. It does not identify the exact offence and does not particularize the charge. It does not provide sufficient particulars and material facts in support of the allegation that an offence under Part III of the Election Offences Act had been committed. It does not provide facts and particulars to show that the alleged offence had extensively prevailed. Neither does it provide facts and particulars to show that the extensive prevalence of the offence, if indeed it had taken place, had more probably than not affected the outcome of the election.

[13] This is not to say of course that the petitioner must plead or disclose his entire evidence. All that is required of him is to state material facts and particulars of the alleged corrupt practice with exactitude and precision. The particulars of general bribery as set out in para. 7 of the petition are not in my view sufficient compliance with the necessity to plead material facts. Paragraph 7(a) even include Pasir Panjang as the place where the alleged bribery occurred but fails to state the co-relation between Pasir Panjang and the constituency of N05 Selama which is the subject matter of the present petition.

[14] It is trite law that an election petition without the material facts relating to corrupt practice is no election petition at all: *Hadrwari Lal v. Kerwal Singh* AIR 1972 SC 515. In *Dr Shafie Abu Bakar v. Pegawai Pengurus Pilihanraya N 26 Bangi & Ors And Other Petitions* [2005] 5 CLJ 349; [2005] 2 MLJ 149 it was held, *inter alia*, as follows:

> It is imperative for the petitioner to identify the precise class of the offence, namely, whether it is general bribery, general treating or general intimidation. Part III of the Election Offences Act 1954 which deals with corrupt practices provides specific definition of

> these offences. The petitioner must identify in clear and specific terms the relevant charge/charges against the third respondent. The facts which constitutes a corrupt practice must be stated and the facts must be correlated to one of the heads of corrupt practice. It is not sufficient for the petitioner to merely state/allege the general class of the offence without sufficiently particularizing the charge. The gravamen of the charge must be set out with exactitude and precision.

[15] The petition also does not state with certainty the person or persons who allegedly committed the corrupt practice and the person or persons who received the bribery and whether the recipient or recipients of the bribe money were on the electoral roll of the N05 Selama constituency. This is not unlike the scenario in *Re Pengkalan Kota By-Election Teoh Teik Huat v. Lim Kean Siew & Anor* [1981] 1 LNS 1 which prompted Eusoffe Abdoolcader J (as he then was) to make the following snide remarks:

> There is no such specific or identifiable particularity in this case but only an allegation of an address to a faceless and amorphous crowd of somewhat uncanalised fluidity of over 1,500 people said to have been largely comprised of electors or voters and people of the constituency.

[16] In the Indian cases of *Anang Uday Singh Dev v. Ranga Nath Mishra & Ors* JT 2001 (8) (SC) 574 and *Gajana Krishnaji Bapat v. Dattaji Raghobaji Meghe* (1995) 5 SCC 347: AIR 1995 SC 2284 it was held that the petition must contain a concise statement of the material facts and set forth full particulars of any corrupt practice that the petitioner alleges, including the names of the parties alleged to have committed such practice, and the date and place of the commission of such corrupt practice. In *Chawla's Election Law & Practice* 2004 edn. by PC Jain and Dr Kiran Jain the learned authors at p. 1412 expressed the view that failure to plead even a single material fact leads to an incomplete cause of action; and incomplete allegations are liable to be struck out. In another Indian case, *Harish Chandra Bajpai v. Triloki Singh* AIR 1957 SC 444 at p. 456 the Supreme Court observed:

> It should not be forgotten that charges of corrupt practice are quasi-criminal in character, and that the allegations relating thereto must be sufficiently clear and precise to bring home the charges to the candidates.

[17] The petitioner in his written submissions filed through his former solicitors submitted that the court must draw a distinction between a challenge made under s. 32(a) and a challenge made under s. 32(c) of the Election Offences Act. It was argued that only where the challenge is made under s. 32(c) that specific instances of corrupt practice must be stated but not where the challenge is made under s. 32(a). With due respect I see nothing in the point taken. In an election petition any allegation of bribery general or specific must be stated with clarity and certainty. The facts pleaded must be such that if established by *viva voce* evidence would be sufficient to prove to the satisfaction of the Election Judge that the offence of corrupt practice had in fact been committed beyond any reasonable doubt. The standard of proof is the same standard of proof that is required to establish the guilt of a man accused of committing a crime. It is not enough to merely establish by the civil standard of proof that it is more probable than not that corrupt practice had taken place, least of all to merely cast a suspicion no matter how grave that general bribery had occurred. Suspicion, speculation, perception and the like have no place in a court of law.

[18] The petition alleges some facts on general bribery but fails to associate those facts with the specific provisions of the law. This failure renders the petition defective in that there is a missing link between the facts stated and the ground pleaded under s. 32(a) of the Election Offences Act. In *Wan Daud bin Wan Jusoh v. Mohamed bin Hj Ali & Anor* [1988] 2 MLJ 384 it was held as follows:

> A petition under rule 4 therefore must not only narrate the facts complained of but must relate or associate the complaints with the provision of the election laws the respondent is alleged to have transgressed ...
>
> The respondents are not expected to make a guess of what provisions they have transgressed and on the basis of that to prepare a conjectural defence. It is the mandatory obligation of the petitioner to associate these facts with the offending regulation.

[19] This principle was endorsed by the Federal Court in *Gan Joon Zin v. Fong Kui Lun & Ors* [2004] 4 CLJ 729: see also *Wan Sagar Wan Embong v. Harun Taib (No 2)* [2009] 1 CLJ 457 FC which reaffirmed *Gan Joon Zin*. Even if the petition were to rely on s. 10 of the Election Offences Act on the allegation of general

bribery, the petitioner has also failed to link the facts to the particular limb of s. 10 relied on to support the ground under s. 32(a) of the same Act. In this respect the petition suffers from the following infirmities:

(a) It fails to state the element of 'bargaining' that had allegedly taken place. There is nothing in the petition to state that there was a counter-promise by voters in the N05 Selama constituency that they would vote for the 1st respondent in return for the BRIM money that had been paid out or promised them by the first respondent and the Barisan Nasional or its agents. In para. 7(h) of the petition, the petitioner merely pleads "bahawa terdapat unsur tawaran atau rundingan di bawah program BR1M di Selama." This falls short of saying that there was as a matter of fact a bargain struck between the first respondent and the voters. In *Mohd Nazri bin Hj Din* (*supra*) the Federal Court quoted with approval the following comments by the learned authors of *Election Laws, Practice and Procedure* by Rama Devi and Mendiratta at p. 790:

> But it should be clearly borne in mind that it is not every gift, offer or promise of gratification to voters which may attract the provisions of s. 123(1). In such gift, offer or promise, there should be an element of bargaining for votes. In other words, any such gift, offer or promise of gratification should be made asking for the votes in return. The Supreme Court held in *Ghasi Ram v. Dal Singh* AIR [1968] SC 1191 that an offer or promise not made to any particular voter or voters but to the general body or residents, without distinguishing between those who were favourably inclined and those who were not, was not corrupt practice. The gist of the corrupt practice lay in attempting to do something for those who were opposed to the candidate with a view to changing their votes and as a bargain for votes.
>
> It follows that the making of the gift, loan, offer etc must be for the purpose of changing the mind of the voters who have been identified. This is logical as the question of inducing a person to do something simply cannot arise if he has already decided to do the very thing.

(b) The petition fails to state that the alleged corrupt act was targeted at a particular or specific group of voters in the N05 Selama constituency.

(c) It fails to state any fact to show that the voters in the N05 Selama constituency had in fact been induced to vote for the first respondent by the money they received under the BRIM program.

(d) The facts pleaded in the petition are insufficient to make a case that the alleged act of general bribery was so prevailing during the nationwide election, including in the N05 Selama constituency.

(e) It is no excuse for the petitioner's failure to specify names to say in para. 7(g) of the petition that "Orang-orang yang dijadikan sasaran penyogokan am tersebut di atas adalah terlalu ramai maka adalah tidak praktikal untuk mengemukakan butir-butir nama mereka semua." The accusation is made, so it behoves the accuser to specify the particulars of those who became the target of the bribery.

(f) Nowhere is it stated in the petition that because of the money given under the BR1M program, voters who initially wished to vote for the petitioner changed their minds and voted for the first respondent instead. The petitioner also fails to identify those voters who were favourably inclined towards him and those who were not. The petition is conspicuously vague in this respect.

Article 119 Of The Constitution

[20] By para. 9 of the petition the petitioner is challenging the validity of the electoral roll by questioning the status of the registered voters in the N05 Selama constituency. The allegation is that voters who were not resident in the constituency of N05 Selama were allowed to vote at the election and this was contrary to art. 119 of the Federal Constitution. In this regard I agree with the learned Senior Federal Counsel that it is outside the powers of an Election Judge to enquire into the electoral roll. The electoral roll is unchallengable and the issue has been put to rest by the apex court in *Muhammad Sanusi Md Nor lwn. Mohd Tajuddin Abdullah & Yang Lain* [2009] 1 CLJ 1. In any event an election petition is not concerned with a dispute over the names of registered voters in the certified electoral roll: see *Tg Nawawi Tengku Ab Kadir lwn. Lokman Muda & Lagi* [1996] 1 CLJ 551. Further, the court's only concern at this stage of the proceeding is whether the petition meets the threshold requirements of the election laws and rules.

[21] The petitioner however contended that his challenge is not on the electoral roll but rather on the observance of the electoral roll. With due respect I do not see any difference between challenging the electoral roll and challenging its observance. It is two sides of the same coin. In any case the petition fails to set out the following:

(a) The written law relating to the conduct of elections that the second respondent allegedly transgressed. The alleged non-compliance with any written law must be specified clearly in the petition as failure to do so will render the petition defective and invalid: *Tan Sri Joseph Kurup* (*supra*);

(b) The identity of the returning officer who allegedly allowed the voters to vote without ascertaining their eligibility;

(c) The identities of voters whom the returning officer allegedly allowed to vote without ascertaining their eligibility;

(d) The exact place, time and date of the incident;

(e) The names of the 'deceased' who were allegedly allowed to vote;

(f) The identities of the 1000 persons alleged to have voted but who did not have any address in the N05 Selama constituency; and

(g) The identities of the persons who allegedly had false addresses.

Conclusion

[22] Having regard to the defects in the petition as adumbrated above I am inclined to agree with the first and second respondents that there had been fatal non compliance with the election laws in the drafting of the petition and that the petition ought to be struck out *in limine*. This disposes of the preliminary objections raised by the first and second respondents but for completeness I shall deal briefly with the point raised by learned counsel for the first respondent that the petition should have been served personally by the petitioner on the first respondent and that no other person had authority to do so on his behalf. In this case the petition was served on the first respondent by a staff of the petitioner's solicitor.

[23] I am unable to accede to counsel's argument if the point intended to be driven home is that the petitioner must himself physically serve the petition on the respondent. It is clear to me that what is required by r. 15(1)(a) of the Rules is for service to be effected on the person of the respondent and not for service to be effected in person by the petitioner. The word 'personally' in the provision refers to the respondent and not the petitioner. To give r. 15(1)(a) the meaning ascribed to it by learned counsel for the first respondent, if I understood him correctly that is, would lead to an absurdity whereby a blind man unaided will never be able to serve his petition on the respondent. I therefore agree with the petitioner that an advocate duly appointed by the petitioner can effect service on his behalf provided service is effected on the respondent personally and provided further that r. 9 and r. 34 of the Rules are complied with.

Order

[24] For reasons aforesaid I am constrained to uphold the preliminary objections raised by the first and second respondents. The petition is struck out with costs.